

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

FRANK WEBB JR.,)	CIVIL 16-00233 LEK-RLP
)	
Plaintiff,)	
)	
vs.)	
)	
NANCY A. BERRYHILL, Acting)	
Director of Social Security,)	
)	
Defendant.)	
_____)	

**ORDER DISMISSING REMAINING CLAIM WITH PREJUDICE
AND DIRECTING THAT THE CASE BE CLOSED**

Pro se Plaintiff Frank Webb Jr. ("Plaintiff") filed his Complaint for Damages ("Complaint") on May 13, 2016. [Dkt. no. 1.] On May 11, 2017, this Court issued the Order to Show Cause Why the Case Should Not Be Dismissed for Failure to Prosecute ("OSC"). [Dkt. no. 17.] The OSC noted that the only claim remaining in this case is Count IV, which alleges that Defendant violated 5 U.S.C. § 552(d). This Court ordered Plaintiff to show cause why Count IV should not be dismissed with prejudice for failure to prosecute and for failure to comply with an order that this Court issued on January 25, 2017. The deadline for Plaintiff to file his response to the OSC was June 2, 2017. [OSC at 2.] This Court cautioned Plaintiff that, if he failed to respond to the OSC, this Court would dismiss the case with prejudice and order that the case file be closed. [Id. at 3.]

Plaintiff did not file a response to the OSC. For the reasons stated in the OSC, this Court FINDS that Plaintiff has abandoned this case. Because Plaintiff has abandoned this case and failed to comply with this Court's orders, this Court has the discretion to dismiss the Complaint with prejudice. See Yourish v. Cal. Amplifier, 191 F.3d 983, 988 (9th Cir. 1999) (holding that the plaintiff's failure to comply with a minute order setting forth the deadline to file the amended complaint gave the district court the discretion to dismiss the case under Fed. R. Civ. P. 41(b)).¹ After weighing the five dismissal factors set forth in Dreith v. Nu Image, Inc., 648 F.3d 779, 788 (9th Cir. 2011),² this Court finds that the public interest in the expeditious resolution of this litigation and this Court's interest in managing the docket strongly outweigh the policy favoring disposition of cases on the merits. Moreover, Defendant

¹ Fed. R. Civ. P. 41(b) states, in pertinent part: "If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it."

² The Ninth Circuit has

identified five factors that a district court must consider before dismissing a case . . . : (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the other party; (4) the public policy favoring the disposition of cases on their merits; and (5) the availability of less drastic sanctions.

Dreith, 648 F.3d at 788 (citations and quotation marks omitted).

Nancy A. Berryhill, Acting Director of Social Security ("Defendant"), will not be prejudiced by dismissal because there have been minimal filings and proceedings regarding Count IV, and there are no less drastic alternatives available at this time.

Count IV, which was the only claim remaining in Plaintiff's Complaint, is HEREBY DISMISSED WITH PREJUDICE. There being no remaining claims in this case, this Court DIRECTS the Clerk's Office to enter judgment in favor of Defendant and close the case immediately.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, June 14, 2017.



/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

FRANK WEBB JR. VS. NANCY A. BERRYHILL, ACTING DIRECTOR OF SOCIAL SECURITY; CIVIL 16-00233 LEK-RLP; ORDER DISMISSING REMAINING CLAIM WITH PREJUDICE AND DIRECTING THAT THE CASE BE CLOSED